appeal. Pending the appeal it continued to make and sell the article. *Held*, that plaintiff was entitled to recover the royalties specified in the contract on the articles made pending the appeal; his failure to procure an injunction restraining the manufacture and sale pending the appeal not procluding a recovery on the contract. Spring and Hiscock, JJ., *dissenting*.

A license does not become *ipso facto* void on a failure to pay royalties even if it contain an express stipulation to that effect. *Standard Dental Mfg. Co. v. Nat. Tooth Co.*, 75 Fed. 291. There must be some proper proceeding and a rescission in equity. *Hanifen v. Lupton*, 95 Fed. 465. The question in this case is obviously the effect of the judgment of the lower court pending appeal. When the case is to be tried anew upon appeal as upon original process, the effect of the appeal is to vacate and render null the judgment. *Powell on Appellate Proceedings*, c. 9. It is very clear that if the judgment remained good, the original cause of action would be merged in it, and might even be pleaded as a bar to it. *Curtiss v. Beardsley*, 15 Conn. 518. So, in an early case, it was held that the judgment of the common pleas, when regularly appealed from, becomes wholly inoperative. *Campbell v. Howard*, 5 Mass. 376. These cases must be distinguished from those where the appeal is in the nature of a writ of error or for review of errors only. In the latter class, the appeal does not vacate the judgment but merely suspends its execution. *Curtiss v. Root*, 28 Ill. 367. Some cases have held, however, that in either case the appeal does not suspend or supercede the force of the judgment. *St. v. Chase*, 41 Ind. 356; *Walls v. Palmer*, 64 Ind. 493.

RAILROADS — CROSSING ACCIDENT — CONTRIBUTORY NEGLIGENCE — INFIRM PERSONS. — TOLEDO P. & W. Co., v. HAMMETT, 77 N. E. (ILL.) 72. *Held*, that a deaf person on approaching a railroad crossing is required to be more careful in order to avoid contributory negligence than a person not so afflicted.

Highway travelers approaching a railroad crossing are charged with diligence to ascertain if a train is about to pass by; and their diligence must be greater accordingly as the particular locality and the circumstances of the case seem to require greater caution. *Morris v. Chic. M. & St. P. R. Co.*, 26 Fed. 22. The care and caution required of a person in crossing a railroad track is such reasonable care and caution as a man of ordinary prudence would exercise in similar circumstances. *Wichita & W. R. Co. v. Davis*, 37 Kan. 743. This usually requiring the traveler to "look and listen." *Easley v. Mo. Pac. R. Co.*, 113 Mo. 236. So it is gross negligence for a blind person to attempt to cross a network of tracks unattended, where he knows that trains are passing. *Fla. Cent. & P. R. Co. v. Williams*, 37 Fla. 406. A greater degree of care is imposed upon an infirm person to avoid danger in crossing the tracks, but the responsibility of the railroad is not increased by the fact of plaintiff's deafness. *Cleveland, C. & C. R. Co. v. Terry*, 8 Ohio St. 570; nor by the fact that plaintiff was blind in one eye, *Marks' Adm'r v. Petersburg R. Co.*, 88 Va. 1; unless the employees in charge of the train know of the infirmity. *C. C. & C. R. Co. v. Terry, supra*. Generally speaking an engineer is bound to use ordinary care but not the highest degree of care when approaching a crossing. *C. R. L. & P. R. Co. v. Caulfield*, 27 U. S. App. 358. And to protect a person in a helpless condition. *Yoakum v. Mettasch*, 26 S. W. 129. But not to stop a train, even when possible, because an idiot is on the

track, the fact of idiocy being unknown to him. *Daily v. R. & D. R. Co.*, 106 N. C. 301.

STATES — TORTS — PERSONAL INJURIES — NEGLIGENCE OF VOLUNTEER. — SPENCER V. STATE, 97 N. Y. SUPP. 154. *Held*, that where the foreman of a repair gang in the employ of the state and engaged in replacing the old flooring of a bridge silently acquiesced in the act of a stranger, who desired to remove boards for his own use, the state was liable for injury to a third person, resulting from the negligent performance of such act by the stranger. Parker and Chester JJ., *dissenting*.

In the absence of statute a state is not liable for the negligence of its officers in the discharge of their ordinary duties, *Chapman v. State*, 104 Cal. 690. But the maxim, "the king can do no wrong," does not imply that the state cannot do an act for which the citizen is not entitled to redress. Its real meaning is that the right to sue must be voluntarily given by the state not coerced, *Metz v. Soule*, 40 Iowa 236; *2 Blackstone 255*. If there be a statute allowing the state to be sued then we are to treat the state as an individual and the question arises, would an individual be liable in the case cited *supra*. *Haluptzok v. Gt. Northern Ry.*, 55 Minn. 446; *Booth v. Mister*, 7 Car. & P 66, hold that where a servant in the employ of the master hires another to assist him in performing acts for the master, the master is liable for the sub-servant's acts. The reasons given are diverse. It may rest upon the idea of implied authority, or of ratification, or of the negligence of the servant in directing or controlling the work, or of the duty of the occupier of premises not to permit his property to become a nuisance. The case of a volunteer is decided for nearly the same reasons, chief of which is the doctrine of implied assent, *Hill v. Morey*, 26 Vt. 78.

TELEPHONES AND TELEGRAPHS — PLACING OF WIRES — REGULATION BY VILLAGE. — VILLAGE OF CARTHAGE V. CEN. N. Y. T. & T. CO., 96 N. Y. SUP. 919. *Held*, that where a telephone company extends its lines in a village without permission of the trustees, the trustees can require such extension to be taken down and placed underground, without requiring a rival company to place its wires underground; there being no such requirement as to wires previously erected, and the rival company not appearing to have made extensions at or after the same time. McLennan, P. J., and Nash J., *dissenting*.

The right to construct a telegraph or telephone line along and upon a street or highway must be derived from an express grant of authority. *N. Y. & N. J. Tel. Co. v. East Orange, N. J.*, 42 N. J. Eq. 490. But a municipality has no right to nullify a franchise granted to a telephone company to erect poles and wires in the streets in the absence of any provision therein reserving the right. *Old Colony Trust Co. v. Wichita*, 123 Fed. 762. Where, however, the use of the streets of a city by a telegraph and telephone company is without authority, either because of the particular mode of use or because of the utter lack of authority to occupy the streets, an injunction by the city will be to restrain such future use. *St. v. Met. T. and T. Co.*, 31 Hun. 596. *Utica v. Utica Tel. Co.*, 24 N. Y. App. Div. 361. And, notwithstanding telegraph lines are instruments of commerce, a city has the right to determine how, in what manner, and upon what condi-